

WEIL, GOTSHAL & MANGES LLP  
 767 Fifth Avenue  
 New York, NY 10153-0119  
 Telephone: (212) 310-8000  
 Facsimile: (212) 310-8007  
 Greg A. Danilow, Esq. (GD 1621)  
 Michael F. Walsh, Esq. (MW 8000)

Attorneys for Defendants Leo R. Breitman,  
 Nathan Gantcher, David V. Harkins,  
 Scott L. Jaeckel, Thomas H. Lee,  
 Ronald L. O'Kelley, and Scott A. Schoen

**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

-----X	
<b>In re</b>	: <b>Chapter 11 Case No.</b>
<b>REFCO, INC., et al.,</b>	: <b>05-60006 (RDD)</b>
<b>Debtors.</b>	: <b>(Jointly Administered)</b>
-----X	
<b>AXIS REINSURANCE COMPANY,</b>	:
	:
<b>Plaintiff,</b>	:
	:
<b>v.</b>	: <b>Adv. Proc. No. 07-01712 (RDD)</b>
	:
<b>PHILLIP R. BENNETT, LEO R. BREITMAN,</b>	:
<b>NATHAN GANTCHER, TONE GRANT,</b>	:
<b>DAVID V. HARKINS, SCOTT L. JAECKEL,</b>	:
<b>DENNIS A. KLEJNA, THOMAS H. LEE,</b>	:
<b>SANTO C. MAGGIO, JOSEPH MURPHY,</b>	:
<b>RONALD L. O'KELLEY, SCOTT A. SCHOEN,</b>	:
<b>PERRY ROTKOWITZ, GERALD SHERER,</b>	:
<b>WILLIAM M. SEXTON, PHILIP SILVERMAN,</b>	:
<b>ROBERT C. TROSTEN, AND DOES 1 TO 10,</b>	:
	:
<b>Defendants.</b>	:
-----X	

**APPELLEE'S COUNTER-STATEMENT OF ISSUES AND COUNTER-  
 DESIGNATION OF RECORD WITH RESPECT TO AXIS'S STATEMENT  
 OF ISSUES AND DESIGNATION OF RECORD ON APPEAL (Docket No. 82)**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, Defendant-Appellees Leo R. Breitman, Nathan Gantcher, David V. Harkins, Scott L. Jaeckel, Thomas H. Lee, Ronald L. O'Kelley, and Scott A. Schoen (collectively, the "Director Defendants") hereby submit the following counter-designation of additional items to be included in the record on appeal and counter-statement of the issue on appeal in connection with the appeal of Axis Reinsurance Company ("Axis") from the Order Granting Director Defendant's Motion to Dismiss the Axis Complaint, entered on August 31, 2007, by the United States Bankruptcy Court for the Southern District of New York (Drain, J. ) (Docket No. 70), and respectfully submit as follows:

### **COUNTER-DESIGNATION OF RECORD**

The Director Defendants hereby counter-designate the following items, annexed hereto as exhibits numbered **1** through **6**, to be included in the record on appeal:

<b><u>Exhibit No.</u></b>	<b><u>Docket No.</u></b>	<b><u>Description</u></b>
1	1, Ex. C	Lexington Insurance Company Directors and Officers Insurance and Company Reimbursement Policy, Excess Liability Policy No. 1620924.
2	11, Ex. A	Decision of the Supreme Court of the State of New York (Justice Helen E. Freedman), dated February 20, 2007, dismissing the complaint of Arch Insurance Company, in the case of <i>Arch Ins. Co. v. Bennett</i> , No. 600805/06.
3	11, Ex. B	Complaint of Arch Insurance Company, dated June 22, 2006, filed in the Supreme Court of the State of New York, in the case of <i>Arch Ins. Co. v. Bennett</i> , No. 600805/06.
4	12, Ex. A	Indictment, <i>United States v. Bennett</i> , No. 05 Cr. 1192 (NRB) (S.D.N.Y.) – The criminal indictment of Phillip R. Bennett, Robert C. Trosten and Tone N. Grant, arising from the collapse of Refco Inc.

5	71	Order of the Bankruptcy Court, dated August 31, 2007, Granting, In Part, Motion to Require Axis Reinsurance Company to Pay Officer and Director Defense Costs in Underlying Litigations and For Relief from the Automatic Stay, to the Extent Applicable, for the Advancement of Such Defense Costs and to Permit Certain Officers to Prosecute Claims Against Axis Reinsurance Company.
---	----	--

### **COUNTER-STATEMENT OF ISSUE ON APPEAL**

The Director Defendants hereby submit the following counter-statement of the issue on appeal:

Did the Bankruptcy Court err in granting the Director Defendants' Motion to Dismiss the Axis Complaint because of the substantial overlap of the factual issues raised in the Axis Complaint and the underlying tort and criminal proceedings pending before the United States District Court for the Southern District of New York?

Dated: October 1, 2007  
New York, New York

/s/ Michael F. Walsh  
Greg A. Danilow, Esq. (GD 1621)  
Michael F. Walsh, Esq. (MW 8000)

WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, NY 10153-0119  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

Attorneys for Plaintiffs Leo R. Breitman,  
Nathan Gantcher, David V. Harkins,  
Scott L. Jaeckel, Thomas H. Lee,  
Ronald L. O'Kelley, and Scott A. Schoen